

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NOS. 2492 TO 2494 & 2576 TO 2578 OF 1999
WITH
CIVIL APPLICATIONS NOS. 12353 TO 12355 OF 1999.

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.
and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER

Versus

URMILABEN CHHATARSINH NAHARSINH

Appearance: FIRST APPEALS NOS 2492/99 TO 2494/99
& CA NOS. 12353/99 TO 13255/99.

MR MUKESH R SHAH for Appellents.

MR KM SHETH for Respondent No. 1

MR PG DESAI GP WITH PREMAL JOSHI AGP for Res.No.1&3.

FIRST APPEALSS NOS. 2576/99 TO 2578/99.

MR PG DESAI, GP WITH MR. PREMAL JOSHI AGP for Appellants.

MR KM SHETH for Res.No.1.

MR MR SHAH for Res.No.2.

CORAM : MR.JUSTICE R.BALIA. and

MISS JUSTICE R.M.DOSHIT

Date of decision: 03/12/1999

Heard the learned advocates for the respective parties.

This group of six appeals are directed against the common judgment and award dated 16th November, 1998, passed by the learned Extra Assistant Judge, Panchmahals, in Land Acquisition References Nos. 642/92; 643/92 and 644/92. The appeals nos. 2492/99 to 2494/99 have been preferred by the District Panchayat, Panchmahals, and the appeals Nos. 2576/99 to 2578/99 have been preferred by the State Government. All these appeals raise a common question of law and are, therefore, with the consent of the learned advocates, disposed of by this common judgment and order.

The facts succinctly stated are : The State Government, on 12th November, 1989, issued a Notification under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), declaring its intention to acquire certain parcels of lands of village-Katwara of Taluka-Dohad, District-Panchmahals, for the public purpose of Agawada Irrigation Tank Project. The lands in question (hereinafter referred to as 'the acquired lands') are the lands bearing Survey Nos. 254, admeasuring 3-Hector-01 Are-60 Sq.Mts. owned by the claimant Urmilaben; Survey No. 256, admeasuring 0-H-44 Are-52 Sq.Mts. and Survey No. 253 admeasuring 0-H-40 Are-47 Sq.Mts. and Survey No. 255, admeasuring 02-H-81 Are-26 Sq.Mts. of Jiyarat land and 0H-30 Are-35 Sq.Mts. of Kharaba land belonging to claimant-Shantaben and Survey No. 295 Paiki, admeasuring 3-H-34 Are-72 Sq.Mts. belonging to the claimant Parvatiben. The Land Acquisition Officer having heard the claims made by the respective claimants, determined the market value of the said lands to be Rs.6000/- per Hector. Feeling aggrieved, the respective claimants made an application under section 18 of the Act seeking reference to the District Court. Accordingly, the above referred References were made and are decided by the learned Extra Assistant Judge, Panchmahals.

The claimants claimed that the lands were situated on Vinzol-Ahmedabad National Highway, and had potential for future development. They, therefore, claimed compensation of a sum of Rs.1,49,000/per Hector. In support of their claims, they relied upon two sale instances at Exs. 22 and 23. Ex. 22 is the certified copy of the Index of the Register maintained by the Sub

Registrar, Dohad. The said Index refers to the sale of the non-agricultural land admeasuring 2121 Sq.Mts. of village Katwara by one Mr. S.B.Shaikh to the Agricultural Produce Market Committee, Dohad. The said land appears to have been sold in the year 1987 for a sum of Rs. 31,500/-. Ex. 23 is the certified copy of the Index of the Register maintained by the Sub Registrar, Dohad. The same is in respect of the sale of a piece of non-agricultural land of village Katwara, admeasuring 2020 Sq.Mts. for a sum of Rs. 14.85 ps. per Sq.Mt. The said piece of land has been sold by one Gomtiben to the Agricultural Produce Market Committee, Dohad, in the year 1987. Relying upon the above referred two sale instances, the learned Judge has determined the additional market value of the acquired lands at Rs. 11.88 per Sq. Mt. Therefore, the appeals.

Both the learned counsels appearing for the respective appellants have raised a common contention. It is submitted that the learned Judge has erred in relying upon the two sale instances which were not admissible in evidence. Apart from the said two sale instances referred to by the respective claimants, the claimants had adduced no other evidence in support of their claims. The finding of the learned Judge in respect of the market value of the acquired lands, therefore, requires to be quashed and set aside. In support of this contention, the learned counsels have relied upon the judgments of the Supreme Court in the matters of - LAND ACQUISITION OFFICER, ELURU & ORS VS JASTI ROHINI (SMT) & ANR ([1995] 1 SCC, 717); U.P.S.R.T.C. ALIGARH VS STATE OF UP & ORS. ({1997} 5, SCC, 148); SPECIAL DEPUTY COLLECTOR VS KURRA SAMBASIVA RAO & ORS ({1997} 6, SCC, 41; and MANIPUR TEA CO. PVT. LTD VS COLLECTOR OF HAILAKANDI (AIR 1997, SC 1779).

In reply to the above contention, the learned advocate Mr. Sheth has submitted that the market value of the acquired land determined by the learned Judge is just and proper and requires to be confirmed. In the alternative, he has submitted that this court should be slow in remanding the matter and should itself determine the market value of the acquired lands. In support of this contention, he has relied upon the judgment of the Supreme Court in the matter of K.KRISHNA REDDY & ORS VS THE SPECIAL DY. COLLECTOR, LAND ACQUISITION UNIT II LMD KARIMNAGAR ANDHRA PRADESH (AIR 1988, SC 2123).

In re Jasti Rohini (supra), the Hon'ble Supreme Court has held the determination the market value based on the basic valuation register to be illegal and

unsustainable. In paragraph-7 of the judgment, the Hon'ble Court has held that - " Such sales must not only be proved, but also be bonafide transactions etc. These factors must be established as a fact by examining either the vendor or the vendee. The marking of certified copies of sale deeds are not proof of either the contents or the circumstances in which it came to be executed." Similar is the view expressed by the Hon'ble Supreme Court in the matters of U.P.S.R.T.C. (supra), Kurra Sambasiva Rao (supra), and Manipur Tea Co. Pvt. Ltd. (Supra). In all the above referred matters, the Hon'ble Supreme Court has held that unless either the vendor or the vendee has been examined to substantiate the sale-deed, neither the sale-deed can legally be admitted to evidence nor can it be relied upon. In the matter of K.Krishna Reddy (supra), the Hon'ble Supreme Court in paragraph-12 of the judgment has held that - " It is of foremost importance that the Award should be made without delay. The enhanced compensation must be determined without loss of time. The appellate power of remand, at any rate ought not to be exercised lightly. It shall not be resorted to unless the award is wholly unintelligible. It shall not be exercised unless there is total lack of evidence. "

As observed hereinabove, here is a case of total lack of evidence. It is indisputable that the claimants have neither produced the sale-deeds they relied upon, nor they have examined any person connected with the said sales i.e. either the vendor or the vendee. The sole evidence before the learned Judge was the entries from the Index of the Register maintained by the Sub Registrar, Dohad. Such indices could not have been relied upon by the learned Judge for determination of the market value of the acquired land. In the circumstances, the impugned judgment and Award requires to be quashed and set aside. There being no other evidence on record, the matters require to be remanded to the Reference Court for re-determination of the market value, after permitting the concerned parties to lead evidence in support of their respective claims.

The appeals are allowed. The impugned judgment and Award dated 16th November, 1998, passed in Land Acquisition References Nos. 642/92, 643/92 and 644/92 is quashed and set aside. All the three Land Acquisition References are remanded to the Reference Court for re-determination of the market value of the acquired lands. All the parties shall be at liberty to lead evidence in support of their respective claims. The said References be decided as expeditiously as possible,

preferably, within four months.

The parties shall bear their own costs.

Civil Applications are disposed of.

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JOSHI